Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00166/2018

THE IMMIGRATION ACTS

Heard at The Royal Courts of Justice	**Decision & Reasons Promulgated**
On 3 February 2020	**On 2 March 2020**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

K G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C Jacquiss, instructed by Polpitiya & Co Solicitors
For the Respondent: Mr P Singh, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Sri Lanka. He appealed to a Judge of the First-tier Tribunal against the Secretary of State's decision of 2 October 2018 making a deportation order and refusing protection status and refusing a human rights claim.

2. The appellant has been in the United Kingdom since 1998. He made an asylum claim which was refused in April 2000 but a subsequent appeal was successful, and he was granted indefinite leave to remain as a refugee on 22 January 2003. On 19 June 2008 he was convicted at the Central Criminal Court of attempted murder and violent

disorder and sentenced to life imprisonment on the first count and three years' imprisonment to be served concurrently on the second count. Following communications from the Secretary of State and representations made on his behalf his refugee status was revoked on 2 August 2018 and he was subsequently served with a deportation order and decision letters.

3. As regards the asylum claim in 1998, the appellant claimed to have been in fear of persecution by the Sri Lankan authorities as a suspected member of the LTTE, because the leader of the LTTE was from the same area as he was. In 1996 he had been detained and held for four months, during which time he was ill-treated and released on a condition to report monthly. He did so until March 1998 and then fled to the United Kingdom.

4. The conviction in 2008 came about as a consequence of the appellant's involvement in a gang called the East Side Boys who attacked a member of a rival gang and, in the appellant's case, inflicted serious injuries on this person with a Samurai sword. And he was ordered to serve twelve years of the life sentence imposed for attempted murder and the concurrent term of three years for violent disorder.

5. With regard to the cessation issue, the judge noted that there was no real dispute with regard to the assertion that the appellant had been convicted of a particularly serious crime. It was also concluded by the judge that the appellant currently constituted a danger to the community. The appellant had pleaded not guilty to the offence for which the judge noted that he continued to deny responsibility. As late as February 2019 when he appeared before the Parole Board he had still denied guilt and in cross-examination was initially equivocal but also sought to mitigate responsibility. He claimed to have been young and naïve with little experience of life although he was aged 30 or 31 at the time of the attack. He now claimed to have remorse.

6. The appellant claimed to be a changed person and referred to his achievements in prison, including certificates for completing a victim's awareness course and thinking skills and many others of entry level academic nature.

7. The judge noted the conclusions of the Parole Board panel hearing of 4 February 2019. The panel heard oral evidence from the offender supervisor, offender manager and the appellant. The panel noted several factors increasing his risk of reoffending and causing harm identified in the evidence provided, including lifestyle and associates, misuse of alcohol, deficits in thinking skills and behaviour and weapons. He maintained that his associations were from local cricket and footballs teams. It was noted that the index offence represented a significant rise in the risk he posed of serious harm and remained largely unexplained. The panel found his evidence relating to his offending history and risk factors to be vague with a tendency to minimise his responsibility for virtually all matters raised. Although he had completed victim awareness work and thinking skills programmes he was found not

to have enough understanding of his risk factors and there was no direction for either release or progression.

8. He had in fact been moved to a more secure regime because of the notice of intention to deport at the end of his minimum term and what was perceived to be a risk of absconding. It was noted that he was an enhanced prisoner, employed full-time in a fabric cutting workshop and there was nothing but positive comments for his work, engagement with staff and prisoners. He was careful with whom he associated and there were no concerns over drug or alcohol misuse. He was assessed as ineligible for either Resolve or the Self-Change Programme principally due to his denial of the index offence. He had accepted that anger management was an issue in the past and might have featured in his offending. He had completed no further offending behaviour work since the last review. The offender supervisor was confident that the appellant would comply with the general regime if placed in open conditions, but he assessed the appellant's risk of absconding as being heighted with some residual concerns over the past associates. He did not recommend the appellant's release.

9. The OGRS scores in the most recent OASys assessment placed the appellant in a group of offenders with a low risk of general reconviction and low risk of reoffending. If he did reoffend he was assessed as posing a medium risk of causing serious harm to the public and the victim of the offence and the public might be caught up in any violence which might emerge. However, the offender manager said that in the context of so little being known about the offence, his risk of violence in the future might be higher than that stated in the OVP score (risk of violent offending) which had placed him at low risk of reoffending. The panel considered these to be realistic assessments of current risk.

10. The judge took into account the argument made on behalf of the appellant that there was a risk of absconding because of the deportation action that had heighted the appellant's risk and that alone was the reason the Board did not direct his release. The judge considered this to be a simplification of the facts. She noted that the report began with a reference to the letter from the Ministry of Justice that indicated that if there was a direction for release of a foreign national prisoner by the Parole Board, Immigration Enforcement, there would be a detention under immigration powers until such time as the prisoner was deported from the United Kingdom or granted bail by an Immigration Judge. Though absconding might have been part of the Parole Board's consideration, it also took into account other risk factors including the appellant's ongoing denial of the offence, tendency to minimise the nature of the offence despite its seriousness and his level of responsibility. This the judge considered to be relevant to the appellant's motivation to comply with any risk management measures were he to be released.

11. She went on to note that he had a history of offending, which included two offences of obtaining property by deception and driving a motor vehicle with excess alcohol, driving while disqualified and using a vehicle while uninsured. The judge thought it was unclear why the offender manager and the Parole Board said they did not have

sufficient information with regard to the index offence but commented that this might be a reference to the lack of explanation for his conduct by the appellant as there was a great deal of information in the various presentence and OASys Reports, the news reports and presumably the vast amount of evidence produced in support of the trial.

12. The judge said that she had regard to the concern of the offender manager that the risk of violent offending might be higher than the OVP scores indicated and that they had concerns with regard to the appellant's true motivation to comply. She said that currently insufficient work had been addressed to address risk. The Parole Board had not been satisfied that it was no longer necessary for the protection of the public that the appellant remain detained.

13. The judge noted the contents of the offender manager's presentence report and the conclusion that the appellant was dangerous as defined by the Criminal Justice Act 2003. The judge found on the evidence that the facts had not changed and that the appellant's evidence did not rebut the presumption and he was not protected from removal by Article 33(2) of the Refugee Convention because of his conviction for attempted murder and violent disorder, and he currently constituted a danger to the community.

14. The judge went on to consider the revocation of refugee status issue, taking full account of the country guidance in GJ and others [2013] UKUT 00319 (IAC) and an expert report of Dr Chris Smith. The judge set out the headlines to the guidance in GJ and considered Dr Smith's report bearing in mind the context of the appellant's activities prior to leaving Sri Lanka and the circumstances of his conviction. The appellant confirmed that he had never been a member of the LTTE prior to his departure from Sri Lanka. His evidence, the judge said, was of one arrest and detention at a time when it was acknowledged that everyone in the northern province had some involvement in the LTTE, and that GJ confirmed that such past history in itself did not put him at risk. The judge commented that as regards the appellant's diaspora activity this had been primarily antisocial behaviour culminating in his involvement in a gang of Tamil men who were terrorising their own community, travelling in convoy to the other side of London armed with weapons to settle a score with a rival gang. He gave no evidence of any pro-Tamil activity.

15. The appellant claimed that his identity and membership of the East Ham/East Side Boys would be known to the authorities because of the media attention gained. The judge remarked that however the news articles produced were from three local newspapers, and in addition the appellant relied on two photographs, which were taken at the same time and neither of which referred to his name.

16. The judge went on at paragraph 83 to conclude that there was nothing in the newspaper articles, nor in the sentencing remarks, the Parole Board report or the OASys assessment to suggest that the activities in which the appellant was involved

was a front for the LTTE or part of their fundraising activity in the diaspora. The judge considered it to be fanciful to suggest that the appellant would be perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan government. There was no evidence that the activity in which he had been involved was anything other than violent criminality.

17. The judge noted that Dr Smith had been asked specifically to consider the likelihood of the Sri Lankan authorities being aware of the appellant's history of involvement in the Tamil gang and why they would be aware. He said that the appellant was convicted of a serious offence and the case was widely reported at the time in the British press. The judge remarked that however there was no supporting evidence for this claim and the appellant had only provided local newspaper articles. Dr Smith had referred to past assistance given to the Metropolitan Police to combat Tamil organised crime but did not refer to the appellant as being one of those organised crime gangs. He referred in the report to a policeman stating that a London Court was told that "Psycho" in Romford was a leading LTTE extortionist in the East Side Boys gang but it had never been part of the appellant's case that he had LTTE involvement.

18. Dr Smith had gone on to give two examples of individuals whom the Sri Lankan authorities believed to be part of Tamil organised criminal activities in the UK linked to the LTTE. Neither example, in the judge's view, was comparable to the situation of the appellant. As regards Dr Smith's claim that it was extremely like that the Sri Lanka authorities would have committed the appellant to "institutional memory" which might mean that he was on a stop or watch list, the judge considered this to be speculative. She said that there was no supporting evidence why the appellant would be on a stop or watch list. He had left Sri Lanka over twenty years ago and having been rounded up with others, held for months and released with a condition to report monthly and this was prior to the end of hostilities. The judge was satisfied that the appellant did not have a profile that would cause him to be of interest to the authorities in Sri Lanka.

19. Dr Smith, who accepted that the appellant did not have a role of significance or importance in the LTTE said this did not mean ipso facto that he would not be of interest on return. The judge noted that this conclusion was based on Dr Smith's assertion that the appellant would be known because of the involvement in a Tamil gang and data collection by the Sri Lankan authorities. The judge was not satisfied on the evidence that there was anything in the appellant's profile that would lead the authorities to conclude that he was involved with diaspora LTTE activity and the judge found he was not in a risk category identified in GJ and others and that it was open to the Secretary of State as a consequence to revoke his refugee status.

20. The judge went on to consider humanitarian protection and Articles 2 and 3 of the ECHR and for the reasons set out with regard to the Refugee Convention findings concluded that there was not a real risk of ill-treatment on return.

21. It was accepted by counsel who appeared on behalf of the appellant that there was not a strong Article 8 claim. The appellant had not given evidence of having a genuine and subsisting relationship with a partner nor with any child settled in the United Kingdom. The judge did not accept, bearing in mind that for the great majority of his time in the United Kingdom the appellant had been engaged in antisocial and criminal activity and for the last ten years had been in prison, that he had integrated into United Kingdom society. There were not very compelling circumstances over and above those described in Exceptions 1 and 2. The appeal was dismissed.

22. The appellant sought and was granted permission to appeal on the basis that the judge had erred with regard to risk on return, quoting the recent decision of the Court of Appeal in RS (Sri Lanka) [2019] EWCA Civ 1796, making the point that the case was not a GJ type case, but rather one where risk existed on the basis of perceived association with gangs with LTTE affiliations, that the judge had erred in her approach to exclusion and the issue of dangerousness. It was also argued that the Article 8 claim was not properly addressed but it was accepted that that was tied in to the success or failure of the first two grounds. Permission to appeal was granted on all grounds.

23. In her submissions Ms Jaquiss relied on and developed the points made in the grounds. With regard to the first ground, it was argued that the judge had failed to make findings as to whether the Sri Lankan authorities would be aware that the appellant had absconded and there would be an arrest warrant, secondly whether the gang link would be discoverable by the Sri Lankan authorities and thirdly whether the gang activities would put the appellant at risk of detention on return.

24. It was also argued that the judge not made findings concerning the risk arising from jumping bail/escaping from custody. The guidance in RS (Sri Lanka) was of relevance to this. There were important issues about the objective evidence in the respondent's COI, quoted in that case, concerning what would happen to a person who had jumped bail/escaped from custody. GJ made reference to a computerised stop list, and if there were an arrest warrant the appellant would be on the stop list. So, the judge was required to consider whether the background to the appellant's claim would put him at risk.

25. As to whether the gang involvement would be discovered by the Sri Lankan authorities there was no clear finding as to what ought to be known or discoverable. The judge had said at paragraph 86 that Dr Smith's evidence was speculative, but the appellant would have to be redocumented and this would lead to discovery and detention. The judge referred to local news reports but a Google search would produce the articles. It was clear from GJ that the Sri Lankan authorities had a sophisticated intelligence network and if a lay person could discover relevant information they would be able to do so either during the redocumentation process or on return.

26. With regard to risk on account of gang activities, the judge said the expert evidence was not reliable, being vague and speculative and being unsupported by the evidence. Clear deference was shown to Dr Smith's evidence at paragraph 8 of the Court of Appeal's decision in RS. He cited in evidence the sources for his opinion. The case had been widely reported in the British press and he had interviewed police officers and had little doubt of links between the LTTE and criminal gangs in the United Kingdom. There was the Sri Lankan website to which he referred about concerns respecting these links. There was the reference to MM as an example, in Dr Smith's report. He considered the appellant was likely to be detained and hence mistreated. He also considered redocumentation issues. It could not be said that the report was other than well-supported and reasoned. The appellant had been second in command in the gang and was known to the Sri Lankan authorities and there was a link between the gang and the LTTE. This was not a GJ case but on its specific facts the judge had failed to address that point.

27. With regard to dangerousness and exclusion, the key point was the report at page 111 in the appellant's bundle. This was the Parole Board decision letter of 14 February 2019. It was assessed that there was a low risk of reoffending and a medium risk of harm if the appellant did reoffend. The judge's conclusion at paragraph 77 that there was no change since 2007 was unsustainable. He had not approached the issue of dangerousness on the premise of release into the community and strict licence conditions and had therefore misunderstood this decision.

28. It was argued on behalf the appellant that the decision of the board was taken solely on the basis that he was subject to a deportation order. This could be seen at paragraph 7 of the report at page 111 of the bundle. Other factors were considered including the need for help in controlling his temper but what was key was why the risk management plan was insufficient and it was until the deportation status was resolved, and an allowed appeal would resolve it.

29. It was also relevant to consider the third paragraph on page 112 which included reference to exemplary compliance with the prison regime and the fact that in different circumstances the panel might have had less doubt about the appellant's future compliance. So, the only reason the panel found that the appellant could not be managed at the time of the review was the risk of absconding to avoid deportation. In contrast before the Parole Board risk factors about immigration status were not relevant to dangerousness. So, if he were released he would not be liable to deportation and the risk factor would be removed so that had to be factored out by the judge. It had been done properly and had made a real difference to considerations as to risk.

30. As had been said in the grounds, reliance was not placed on Article 8 per se and it was accepted that that essentially stood or fell with the conclusions about the first two grounds.

31. In his submissions Mr Singh observed that RS had not been before the judge. In the grounds it was said that as the appellant had exited Sri Lanka illegally he would be at real risk of an arrest warrant. In contrast to RS the appellant had never claimed to be part of the LTTE and the events in question had happened twenty years ago when there were general roundups of Tamil men especially from the Jaffna area. The case had been successful on appeal because of his general characteristics. If the Tribunal found there was an error of law and it was material with regard to illegal exit it would be a material error of law, but there were only small errors. There was the question of whether the appellant would be at risk if a Google search were done. The judge had dealt with the media reports in the United Kingdom. All that had been produced were several local newspaper articles. It had not been evidenced that the authorities would conduct an internet search about the appellant's crimes in the United Kingdom. It should be questioned whether all returnees' profiles were checked and whether there was a digital profile of the crimes if any while in the United Kingdom. If the Tribunal found there was a possibility of the authorities carrying out a Google search then it was accepted that his Google profile would become known , including that he was a member of a violent Tamil gang in the United Kingdom. With regard to the affiliation of the gang and whether the LTTE links would mean greater risk, the judge had addressed that at paragraph 84 to paragraph 86. The grounds were a matter of disagreement only. The judge had not accepted the appellant would be linked with LTTE activities.

32. With regard to the point that it was not a GJ case, if not it could not be said that the gang issue would put the appellant at risk because of tenuous links with the LTTE. The judge's findings in this respect were sound.

33. With regard to the issue of dangerousness, the judge had gone to some length to show why she believed the appellant was still a risk to the public despite the OASys report. She noted the Parole Board's conclusions and quite clearly accepted the conclusions of the report. There had been exemplary compliance and deportation risk was a main factor. She addressed the reasoning including the ongoing denial of the offence and minimising the offence. This was relevant to compliance motivation. A number of factors were set out at paragraphs 71 to 76. The judge had considered the positives as well as the negatives, for example the completion of the community order. She was right to conclude as she did with regard to risk to the public. The question then was whether the risk factors about immigration status could be relied on in respect of dangerousness. It was argued that the judge had quite rightly gone into detail about the weight of the other factors as well as the immigration status issue to find the appellant was still a risk to the public. The findings on Article 8 were sound.

34. By way of reply Ms Jacquiss accepted that of course RJ had not been before the judge, but he had analysed already existing country information when there had been absconding from bail or illegal exit which could lead to a risk on return. The grounds set out how the case had been put to the judge on the basis of risk on the grounds of leaving Sri Lanka illegally and, if detained, risk of ill-treatment and the

fact that the links to the gang would be identified. This was set out in the skeleton before the judge at paragraph 17. Also there was clear evidence from the expert about checks on returnees and the appellant would be returned having left illegally and having a criminal record. As regards treatment of the evidence in the report, it was not a matter of mere disagreement but the basis for the conclusions had been set out and the links between the gang and the LTTE would be perceived. It was not a GJ case in the sense that the appellant was political but it was a question of the perception of the links. The submissions on dangerousness were maintained.

35. I reserved my decision.

36. The first argument upon which the appellant relies is the question whether the judge adequately or at all addressed the issue of whether the Sri Lankan authorities would be aware that he had previously absconded and exited the country illegally following his release from detention on bail and whether he might be subject to an outstanding arrest warrant.

37. The judge properly set out the guidance from GJ. It is of course part of the appellant's claim that this is not a straightforward GJ-type political opinion case but is concerned rather with perception and that is a point of particular relevance with regard to the appellant's index criminal offence and gang membership, to which I shall come on shortly. The judge was clearly right to set out the GJ guidance of relevance to the appellant. Dr Smith commented on the redocumentation process, concluding that the main area of risk for the appellant was return to Sri Lanka and that it was extremely likely that the Sri Lankan authorities had committed him to institutional memory, which might mean that he was on a stop or watch list.

38. In GJ it was said in the guidance that a person whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant is in one of the risk categories. It was said that individuals whose name appears on a "stop" list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.

39. As noted above, the appellant's history is that he was detained and held for four months in 1996 during which time he was ill-treated, was released on a reporting condition which he observed until March 1998 and then fled to the United Kingdom.

40. Ms Jacquiss referred to RS (Sri Lanka) which concerned an appellant who had been detained in Sri Lanka from shortly after the civil war ended in May 2009 and was detained while in detention on account of his association with the LTTE. In December 2010 after eighteen months in detention he escaped and went into hiding but eventually succeeded in travelling to the United Kingdom. The judge in that case found there was no risk on return. The Court of Appeal noted that the appellant had been arrested after the end of the war, although only shortly after, and remained of sufficient interest to the authorities, to be detained for some eighteen months

thereafter during which time he was tortured and he was not released but escaped from custody. It seemed to the court on those facts to be inherently likely that the authorities would seek to recapture him and to do so by issuing an arrest warrant.

41. This authority was, of course, not before the judge in this case, thought as Ms Jacquiss pointed out, the decision was based on materials that were in existence at the time of the judge's decision.

42. The judged noted that the appellant had never been involved with the LTTE and that his evidence was of one of arrest and detention at a time when it was acknowledged that everyone in the northern province had some involvement in the LTTE. The judge considered that Dr Smith's evidence that it was extremely likely that the Sri Lankan authorities would have committed the appellant to "institutional memory" which might mean that he was on the stop or watch list was speculative. She commented that there was no supporting evidence for why he would be on a stop or watch list. He left Sri Lanka over twenty years ago having been rounded up with others, held for a month and released with a condition to report monthly and that this was before the end of hostilities. As a consequence, the judge was satisfied that the appellant did not have a profile that would cause to be of interest to the authorities in Sri Lanka.

43. In my view there is no error of law in the judge's evaluation of risk on return in this regard. It is entirely consistent with the guidance in GJ. It is not inconsistent with what was said in RS either. The facts of the two cases are clearly different, and I note the emphasis by the Court of Appeal at paragraph 25 of its judgment on the fact that RS was arrested after the end of the war and was detained for some eighteen months and escaped from custody. By contrast the appellant was detained for four months and released on a reporting condition and that was in 1996 as the judge noted at a time when it appears to have been common ground that everyone in the northern province had some involvement in the LTTE. In my view it was open to the judge to consider that Dr Smith's claim about the institutional memory of the authorities being speculative was a conclusion that was open to her. The reasoning at paragraph 86 of her decision is sound.

44. The next issue is that of whether the appellant's previous involvement with the East Side Boys might be known or discoverable on account of media reports or simply by putting the appellant's name into a search engine.

45. Dr Smith referred to the view of the Metropolitan Police that the East Side Boys were paid by the LTTE and his agreement with that view. Dr Smith believed that there would have been considerable communication between the Sri Lankan Police and those involved in Operation Enver which was a special task force set up to combat Tamil organised crime in the United Kingdom. Dr Smith's approach to Scotland Yard to discuss this matter was unsuccessful but he had no reason to believe that the view of Tamil crime links to the LTTE had changed despite the success of Operation Enver overall.

46. An example was quoted by Dr Smith from the Sri Lankan Ministry of Defence website concerning a person who was arrested in Sri Lanka who had documentation relating to the LTTE extracting funds from the Tamil diaspora in the United Kingdom. He gave another example of a former member of the East Side Boys who reported to the Sri Lankan High Commission as instructed by the Secretary of State and was closely questioned as to his links to the LTTE and was shown media coverage of a revenge attack against him and that the official was in possession of enough information to prove his links to the LTTE in East London and displayed awareness of his criminal conviction for a firearm offence. He had admitted when asked about attendance at rallies and was told he would answer for his crimes on return to Sri Lanka. At a subsequent interview he was asked if he still assisted the LTTE and whether he collected money for them.

47. Dr Smith considered that the similarity between this case and that of the appellant indicated a strong likelihood the appellant would either be placed under surveillance on return to Sri Lanka or more likely detained at the airport and as a consequence ill-treated.

48. The judge noted that there was nothing in the newspaper articles or in the sentencing remarks, the Parole Board report or the OASys assessment to suggest that the activities in which the appellant was involved were a front for the LTTE or part of their fundraising activity in the diaspora. She considered it to be fanciful to suggest that the appellant would be perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan government and there was no evidence that the activity in which he had been involved was anything other than violent criminality.

49. She then went on at paragraph 84 of her decision to consider Dr Smith's evidence as summarised above. She noted that the appellant had only provided local newspaper articles rather than showing that the case was widely reported at the time in the British press. She went on to refer to the two examples given by Dr Smith, commenting as regards the first case the facts of a person being arrested in Sri Lanka with a large number of pin numbers, bank receipts for local and foreign banks and a large amount of money that it was hardly comparable to the appellant. The second case involved a person with a conviction for a firearm offence who had been told he would answer for his crimes on return to Sri Lanka and she commented that it was not clear how this incident translated to the appellant being placed on surveillance on return to Sri Lanka or more likely detained at the airport, as claimed by Dr Smith.

50. Although the judge could have said more about this, I consider that again her findings were open to her. It is relevant for example to note, though it is, I accept, not a point made by the judge, that MM admitted attendance at rallies. The fact that there was awareness of a criminal conviction in this case in that one isolated incident was not such as in any sense to require the judge to go on and conclude that the case was sufficiently on fours with that of the appellant or that there would be that level

of knowledge about him such as to place him at risk on return. It is not made clear what the level or type of the media coverage, of which the Sri Lankan official was aware, consisted. As noted by the judge, the only evidence that has been provided in this case is that in local newspapers. Although the judge appears to have placed some emphasis, for example at paragraph 87 of her decision, on actual involvement in diaspora LTTE activity, there is sufficient in her judgment, in particular at paragraphs 84 and 85 to show that she was aware that the claimed risk was on the basis, at least in part, of perception of LTTE involvement via the gang, and I consider that this was a matter that was properly addressed by the judge.

51. The next issue is that of exclusion and the dangerousness point. In essence it is argued on behalf of the appellant that the essential reason why the Parole Board would not direct release was because of the fear of absconding due to the impeding decision on deportation.

52. It can be seen from the Parole Board hearing decision letter of 14 February 2019 that the offender manager did not recommend either progression to open conditions or release. Among other things she said that the appellant did not fully understand his risk factors and would require one to one work on controlling his temper. When questioned as to why the risk management plan was not in her view sufficient to manage his risk she assessed him as a medium risk of breaching his licence conditions and remaining unlawfully at large in the community, to avoid deportation. She said that any risk management plan would require full compliance on the appellant's part and until his deportation status was resolved she was not sufficiently confident in his intentions. She added that if unlawfully at large in the community there was effectively no risk management plan in place and his risk of serious harm would rise with the potential for reckless behaviour.

53. The panel considered the current assessments of risk and gave full credit for the relevant but limited offending behaviour work completed and the evidence of positive behaviour in closed conditions. It considered that his ongoing denial of the index offence was not in itself a bar to progression or release but certainly hindered an understanding of his risk factors. His tendency to minimise the nature of these incidents and therefore his level of responsibility gave cause for concern over his understanding of what changes he needed to make to live pro-socially. On the other hand his compliance with the prison regime was exemplary and in different circumstances the panel might have had less doubt about his future compliance. The panel had to bear in mind that he had a conviction for seeking to travel under a false passport with the specific intention of avoiding deportation. He had been notified that the UK authorities intended to deport him now as his minimum term had been reached subject to the appeal process and the panel therefore agreed with the professionals that his risk of absconding was heightened. The offender manager was clear that his risk of absconding/being unlawfully at large in open conditions or in the community was for the time being unmanageable and in that situation his risk of serious harm would rise. The panel agreed and did not recommend his transfer to open conditions. It was not satisfied that it was no longer necessary for the

protection of the public that he remain detained and did not think his risk could currently be managed in the community. It was necessary for his case that he was detained and no direction was made for his release.

54. Clearly a factor of significance to this decision was the risk of absconding until the appellant's deportation status was resolved. However, I consider it was open to the judge, at paragraph 72 of her decision, not to agree that it was the risk of absconding because of the deportation action that alone heightened the appellant's risk as the reasons for the decision. As she noted, absconding might have been part of the Parole Board consideration but it also took into account other risk factors including the appellant's ongoing denial of the offence, his tendency to minimise the nature of the offence despite its seriousness and his level of responsibility. In the circumstances I consider it was open to her to conclude that the presumption had not been rebutted and that he currently constituted a danger to the community and as a consequence consider that her conclusion that it was right to uphold the decision to revoke the refugee status of the appellant was lawful. The submissions to the contrary in this regard are in my view a matter of disagreement only.

55. It was common ground that the Article 8 challenge stood or fell with the decision in respect of the first two grounds, and in light of my findings on those two matters, that in my view falls away.

Notice of Decision

56. The appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 13 February 2020

Upper Tribunal Judge Allen